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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,231	11/19/2003	Marcy Lynn Daniel	41872-287263	6933
7590	09/29/2005		EXAMINER	
J. Michael Boggs Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101-2400			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/717,231	DANIEL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Alissa L. Hoey	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 August 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 2,5,6,8-10,14,15,17,20,21,23-25 and 29-36 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,4,11-13,16,18,19 and 26-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/19/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-29 in the reply filed on 08/24/05 is acknowledged.
2. Claims 2, 5, 6, 8-10, 14, 15, 17, 20, 23-25 and 29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected match indicator, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 08/24/05.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (US 4,734,938).

In regard to claim 1, Anderson teaches a set of garments, each of the garments (10) in the set comprising a garment match indicator (12, 14) comprising a word describing an identifiable characteristic common to the garments in the set (12). The garment match indicators having a color different than the color of the garment (column 2, lines 36-41). Wherein each of the garments is matable to the other garments by the garment match indicator (column 1, lines 63-68).

In regard to claim 12, Anderson teaches the garment match indicator being integrally formed in the garment (column 2, lines 28-31).

In regard to claim 13, Anderson teaches the garment match indicators being knit into the garment (column 2, lines 28-31).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Brevoort (US 2004/0216219).

In regard to claim 1, Brevoort teaches a set of garments each of the garments (1) in the set comprising a garment match indicator (3) comprising a word describing an identifiable characteristic common to the garments in the set (figures 1-4). The garment match indicators having a color different than the color of the garment (paragraph 0011). Wherein each of the garments is matable to the other garment by the garment match indicators (paragraph 0009).

In regard to claim 16, Brevoort teaches a pair of socks each sock comprising a toe, a heel, a foot portion between and including the toe and the heel, a medical side and a lateral side (figures 1-4). The foot portion further comprising a bottom below the midline on each of the medical and lateral sides of the foot portion (figure 1). A sock match indicator disposed on the bottom of the foot portion comprising a word describing

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an identifiable characteristic common to each of the socks of the pair (paragraph 0011).

The color of the sock match indicator being different than the color of the sock. Each of the socks of the pair is matable to the other by the sock match indicators (paragraph 0009).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Jenkins (US 2,621,501).

Anderson teaches a sock match set as described above in claim 1. However, Anderson fails to teach the match indicator comprising the name of the size of the garments and each set of garments having a different size. Wherein the name of the size of the garments for each set of garment comprises a unique color.

In regard to claim 3, Jenkins teaches the garment match indicators comprising the name of the size of the garment (column 1, line s51-55 through column 2, lines 1-4).

In regard to claim 4, Jenkins teaches a plurality of sets of garment each set of garments having different size, wherein the name of the size of the garments for each set of garments comprises a unique color (figures 1-3).

It would have been obvious to have provided the sock match indicator set of Anderson with the match indicators representing the size of the garment of Jenkins, since the sock match indicator set of Anderson provided with match indicators representing the size of the garments would allow the user not only to match two socks together but to further allow the user to match the socks together based upon size so the final paired sets are of equal size.

9. Claim 11, 16, 18, 19, 26, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Carter (US 3,135,442).

In regard to claim 16, Anderson teaches a pair of socks each sock comprising a toe, a heel, a foot portion between and including the toe and the heel, a medial side and a lateral side. The foot portion further comprising a bottom below the midline on each of the medical and lateral sides of the foot portion. A sock match indicator disposed on the foot portion comprising a word describing an identifiable characteristic common to each of the socks of the pair. The color of the sock match indicator being different than the color of the sock. Each of the socks of the pair is matable to the other by the sock match indicators.

However, Anderson fails to teach the sock having the match indicators disposed on the bottom of the foot portion.

Carter teaches a sock with trademark and size information located on the bottom of the foot portion (figure 1).

Anderson teaches a garment with match indicators as described above in claims 1 and 16. Further, Anderson teaches However, Anderson fails to teach the sock further

comprising a brand identifier and the match indicator comprising the name of the size of the socks. Further, Anderson fails to teach a plurality of pairs of socks each pair of the socks having a different size wherein the name of the size of the socks for each pair of socks comprises a unique color.

In regard to claims 11 and 26, Carter teaches a sock garment with trademark information located on the sock which would identify the brand (column 1, lines 12-17).

In regard to claim 18, Carter teaches the sock match indicators comprising the name of the size of the socks (column 1, lines 12-17).

In regard to claim 19, Carter teaches a plurality of pairs of socks each pair of socks capable of having a different size wherein the name of the size of the socks for each pair of socks can comprise a unique color if desired.

In regard to claims 27 and 28, Anderson teaches the sock match indicator being integrally knit into the sock body.

It would have been obvious to have provided the sock with match indicators of Anderson with the match indicators of Carter located on the bottom of the sock and detailing the size and trademark information, since the sock of Anderson provided with match indicators located on the bottom of the sock detailing the size and trademark information would provide for the indicators to be concealed from view no matter what style shoe is worn with the sock and the size and trademark information ensures that the pair of socks mated together would be of the same size and brand to ensure proper and even fit on both feet.

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10. Claims 3, 4, 7, 18, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brevoort in view of Jenkins (US 2,621,501).

Brevoort teaches a garment with match indicators as described above in claim 1 and 16. However, Brevoort fails to teach the match indicators comprising the name of the size of the garments and a plurality of sets of garments having a different size wherein the name of the size of the garments for each set of garments comprising a unique color.

In regards to claims 3, 4, 7, 18, 19 and 22, Jenkins teaches a sock having match indicators comprising the name of the size of the garments and a plurality of sets of garments having a different size wherein the name of the size of the garment for each set of garments comprises a unique color (figures 1-3 column 2, lines 1-16).

It would have been obvious to have provided the sock with match indicators of Brevoort with the size and color indicating teaching of Jenkins, since the sock with match indicators of Brevoort provided with a size and color indicating the particular match of a garment sock set would allow one to pair up sock sets easily and correctly after the laundering process.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson, Adeli, Garneau and Habert are all cited to show closely related garment articles.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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